

**MEMORANDUM OF AGREEMENT  
AMONG  
THE WESTERN COLORADO AREA OFFICE, BUREAU OF RECLAMATION,  
THE U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,  
AND THE UTAH STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE GREEN RIVER CANAL FISH BARRIER PROJECT,  
UPPER COLORADO RIVER ENDANGERED FISH  
RECOVERY IMPLEMENTATION PROGRAM,  
EMERY COUNTY, UTAH**

**WHEREAS**, the Bureau of Reclamation (Reclamation) plans to construct a fish barrier on the Green River Canal (Canal), replace the Canal's intake gates and one of the Canal's siphons, line approximately 1,000 feet of the Canal, and modify the 8-Gate structure located in the Tusher Diversion Dam west-raceway (Project); and

**WHEREAS**, Reclamation plans to use Federal funds to implement the Green River Canal Fish Barrier Project to minimize canal entrainment of adult and sub-adult Colorado pikeminnow and razorback sucker, thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations, 36 CFR Part 800; and

**WHEREAS**, the U.S. Army Corps of Engineers, Sacramento District (USACE) proposes to issue a permit for the Project, pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) to Reclamation, for the Project and therefore has a federal action associated with the Project (USACE's undertaking); and

**WHEREAS**, the USACE has designated Reclamation as the lead federal agency for compliance with Section 106 of the NHPA for the Project, has participated in the development of this MOA, and has chosen to participate in the MOA as a Signatory; and

**WHEREAS**, Reclamation has defined the undertaking's area of potential effect (APE) as contained within 15 acres and includes the USACE's undertaking, as depicted in Attachment A of this MOA; and

**WHEREAS**, Reclamation, as lead federal agency has determined, in consultation with the Utah State Historic Preservation Officer (SHPO), that the Green River Canal (42EM4443) is eligible for listing on the National Register of Historic Places under Criterion A and that the Project will result in an adverse effect to historic properties; and

**WHEREAS**, Reclamation has consulted with the Southern Ute Indian Tribe, Ute Indian Tribe – Uintah and Ouray Reservation, and the Ute Mountain Ute Tribe on the proposed undertaking, and the tribes have chosen not to participate in the consultation; and

**WHEREAS**, Reclamation has consulted with the Emery County Commissioners and the City of Green River on the proposed undertaking, and they have chosen not to participate in the consultation as a concurring party; and

**WHEREAS**, in accordance with 36 CFR § 800.6(a)(1), Reclamation has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation, and the Council has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii);

**NOW, THEREFORE**, pursuant to Section 106 of the NHPA, Reclamation, USACE, and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect on historic properties.

## **STIPULATIONS**

Reclamation shall ensure that the following measures are carried out:

### **I. MITIGATION**

a. Prior to any modification of the Green River Canal, Reclamation will ensure that the segment of the property (5EM4443) shall be recorded in accordance with *The Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation guidance for Level I Documentation*, as published in the Federal Register on September 29, 1983 (Vol. 48, No. 190, pp. 44730-34). One feature of the property (siphon) will be documented as a part of the mitigation. The documentation will be of archival quality, and will include a detailed narrative history, mapping of the property and photographic documentation of the portions of the historic property to be included in the project. Photographs will be black and white archival quality (4" x 6") prints. Features will be plotted on the maps with GPS waypoints and will be extensively described and indexed in the report. Representative design drawings will not be necessary for this property, as it is not significant for its design characteristics.

Stipulation I.a must be satisfied prior to the start of construction and/or any earth disturbances within the APE.

b. Reclamation will submit a copy of the Level I Documentation to the SHPO within one (1) year of the execution of this MOA. The SHPO shall review and provide comments within thirty (30) calendar days of receipt. Once accepted by SHPO, SHPO shall receive a minimum of one archivally-stable copy of the final recordation for its files and provide documentation of acceptance. The activities prescribed by the stipulations of this MOA shall be carried out by or under the direct supervision of a person or persons meeting, at minimum, the Secretary of the Interior Profession Qualification Standards (48 FR 44738-39) (PQS) in the appropriate discipline. This does not preclude the use of properly supervised persons who do not meet the PQS.

### **II. DURATION**

This MOA will be null and void if its terms are not carried out within one (1) year from the date of its execution. Prior to such time, Reclamation may consult with the SHPO to reconsider the terms of the agreement. Unless terminated pursuant to Stipulation VI, below, this MOA will be in effect through Reclamation's implementation of the stipulations of this MOA, and will terminate and have no further force or effect when

Reclamation, in consultation with the SHPO, determines that the terms of the MOA have been fulfilled in a satisfactory manner. Within 14 days of a determination that the terms of the MOA have been satisfactorily fulfilled, Reclamation will notify the SHPO and USACE of the termination of the MOA.

### **III. POST-REVIEW DISCOVERIES**

If previously unidentified potential historic properties are discovered within the APE or unanticipated effects on historic properties found, Reclamation shall implement the discovery plan included as Attachment B of this MOA.

### **IV. DISPUTE RESOLUTION**

Should the SHPO or USACE object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, Reclamation shall consult with the SHPO and/or USACE to resolve the objection, as appropriate. If Reclamation determines that such objection cannot be resolved, Reclamation will:

- a. Forward all documentation relevant to this dispute, including Reclamation's proposed resolution, to the ACHP. The ACHP shall provide Reclamation with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, Reclamation shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, USACE, and the SHPO, and provide them with a copy of this written response. Reclamation will then proceed according to its final decision.
- b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, Reclamation may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, Reclamation shall prepare a written response that takes into account any timely comments regarding the dispute from the SHPO and USACE, and provide them and the ACHP with a copy of such written response.
- c. Reclamation's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

### **V. AMENDMENTS**

This MOA may be amended when such an amendment is agreed to by all Signatories. The amendment will be effective on the date the amendment is fully executed. Reclamation will file a copy of the amendment to the MOA, signed by all of the Signatories, with the ACHP, pursuant to §800.6(c)(7).

### **VI. TERMINATION**

If any Signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatories to attempt to develop an amendment to this MOA per Stipulation V, above. If within thirty (30) days (or another

time period agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate the MOA upon written notification to the other Signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, Reclamation must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. Reclamation shall notify the Signatories as to the course of action it will pursue.

**EXECUTION** of this MOA by Reclamation, USACE, and the SHPO, pursuant to 36 CFR § 800.6, including its transmittal by Reclamation to the ACHP in accordance with 36 CFR § 800.6 (b)(1)(iv), and subsequent implementation of its terms shall evidence that Reclamation has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

**SIGNATORIES:**

Utah State Historic Preservation Officer

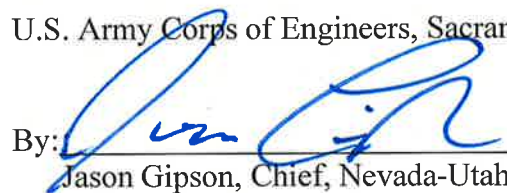
By:  Date: 8.31.17  
Brad Westwood, SHPO

Bureau of Reclamation, Western Colorado Area Office

By:  Date: 8-28-17  
Ed Warner, Area Manager

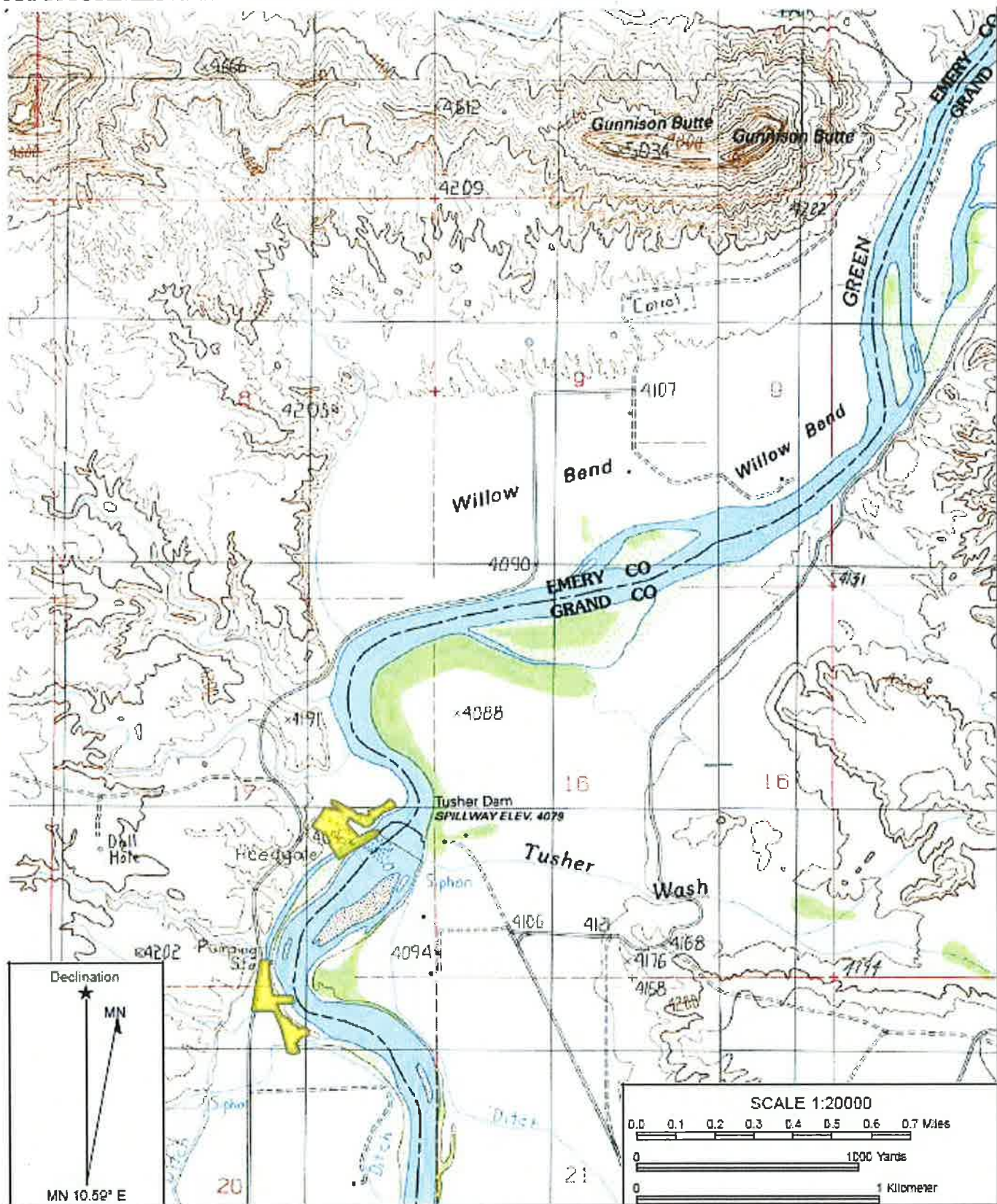
**Sign**

U.S. Army Corps of Engineers, Sacramento District:

By:  Date: 8/22/2017  
Jason Gipson, Chief, Nevada-Utah Section



# ATTACHMENT A – AREA OF POTENTIAL EFFECT



Name: BLUE CASTLE BUTTE  
Date: 06/06/17

Location: Sec 016 T020S R016E UT Salt Lake  
Caption: Yellow polygons depict the Green River Fish Barrier Project Area of Potential Effect

Copyright (C) 2000 AirPhoto

## ATTACHMENT B – UNANTICIPATED DISCOVERY PLAN

### PLAN AND PROCEDURES FOR THE UNANTICIPATED DISCOVERY OF CULTURAL RESOURCES

#### GREEN RIVER FISH BARRIER PROJECT UPPER COLORADO RIVER ENDANGERED FISH RECOVERY IMPLEMENTATION PROGRAM, EMERY COUNTY, UTAH

### 1. INTRODUCTION

Reclamation plans to construct a fish barrier on the Green River Canal (Canal), replace the Canal's intake gates and one of the Canal's siphons, line approximately 1,000 feet of the Canal, and modify the 8-Gate structure located in the Tusher Diversion Dam west-raceway. The following Unanticipated Discovery Plan (UDP) outlines procedures to follow, in accordance with state and federal laws, if archaeological materials are discovered.

### 2. RECOGNIZING CULTURAL RESOURCES

A cultural resource discovery could be prehistoric or historic. Examples include, but are not limited to:

- An accumulation of shell, burned rocks, or other food related materials
- An area of charcoal or very dark stained soil with artifacts,
- Stone tools or waste flakes (i.e. an arrowhead, or stone chips),
- Clusters of tin cans or bottles, logging or agricultural equipment that appears to be older than 50 years,
- Buried railroad tracks, decking, or other industrial materials.

When in doubt, assume the material is a cultural resource.

### 3. ON-SITE RESPONSIBILITIES

**STEP 1: STOP WORK.** If any Reclamation employee, contractor or subcontractor believes that he or she has uncovered a cultural resource at any point in the project, all work within 50 feet of the discovery must stop. The discovery location should be secured at all times.

**STEP 2: NOTIFY BUREAU OF RECLAMATION.** Contact the Project Overseer at the Bureau of Reclamation:

Reclamation Project Overseer:

Jennifer Ward

970-248-0651

jward@usbr.gov

The Project Manager or the Reclamation Project Overseer will make all other calls and notifications.

If human remains are encountered, treat them with dignity and respect at all times. Cover the remains with a tarp or other materials (not soil or rocks) for temporary protection in place and to shield them from being photographed. Do not call 911 or speak with the media.

#### **4. FURTHER CONTACTS AND CONSULTATION**

**A. Project Manager's Responsibilities:**

- Protect Find: The Project Manager is responsible for taking appropriate steps to protect the discovery site. All work will stop in an area adequate to provide for the total security, protection, and integrity of the resource. Vehicles, equipment, and unauthorized personnel will not be permitted to traverse the discovery site. Work in the immediate area will not resume until treatment of the discovery has been completed following provisions for treating archaeological/cultural material as set forth in this document.
- Direct Construction Elsewhere On-site: The Project Manager may direct construction away from cultural resources to work in other areas prior to contacting the concerned parties.
- Contact CR Manager: If there is a CR Program Manager, and that person has not yet been contacted, the Project Manager will do so.
- Contact Project Overseer: If the Project Overseer at the Bureau of Reclamation has not yet been contacted, the Project Manager will do so.
- Identify Find: The Project Manager will ensure that a qualified professional archaeologist examines the find to determine if it is archaeological.
  - If it is determined not archaeological, work may proceed with no further delay.
  - If it is determined to be archaeological, the Project Manager will continue with notification.
  - If the find may be human remains or funerary objects, the Project Manager will ensure that a qualified physical anthropologist examines the find. If it is determined to be human remains, the procedure described in Section 5 will be followed.

## B. Project Overseer's Responsibilities

- Notify SHPO: The Project Overseer will notify the Utah State Historic Preservation Office (SHPO).

### Colorado State Historic Preservation Office:

Mr. Brad Westwood, State Historic  
Preservation Officer  
Utah Division of State History  
300 S. Rio Grande Street (450 West)  
Salt Lake City, UT 84101  
(801)-367-6324

- Notify USACE: The Project Overseer will notify the U.S. Army Corps of Engineers, Sacramento District (USACE).

### Nevada-Utah Section:

Mr. Mike Pectol, Project Manager  
Bountiful Office  
533 West 2600 South, Suite 150  
Salt Lake City, UT 84010  
(801) 295-8380 x15

## C. Further Activities

- Archaeological discoveries will be documented as described in Section 6.
- Construction in the discovery area may resume as described in Section 7.

## **5. SPECIAL PROCEDURES FOR THE DISCOVERY OF HUMAN SKELETAL MATERIAL**

Any human skeletal remains, regardless of antiquity or ethnic origin, will at all times be treated with dignity and respect.

In the event possible human skeletal remains are discovered, Reclamation will coordinate with the following contact:

Emery County Sheriff  
(435) 564-3431

## A. Further Activities:

When consultation and documentation activities are complete, construction in the discovery area may resume as described in Section 7.



## **6. DOCUMENTATION OF ARCHAEOLOGICAL MATERIALS**

Archaeological deposits discovered during construction will be assumed eligible for inclusion in the National Register of Historic Places until a formal Determination of Eligibility is made.

The Project Manager will ensure the proper documentation and assessment of any discovered cultural resources in cooperation the SHPO, the USACE, affected tribes, and a contracted consultant (if any). All prehistoric and historic cultural material discovered during project construction will be recorded by a professional archaeologist in accordance with all state and federal laws.

## **7. PROCEEDING WITH CONSTRUCTION**

Project construction outside the discovery location may continue while documentation and assessment of the cultural resources proceed. A professional archaeologist must determine the boundaries of the discovery location. In consultation with SHPO, USACE, and affected tribes, the Project Manager and Project Overseer will determine the appropriate level of documentation and treatment of the resource.

Construction may continue at the discovery location only after the process outlined in this plan is followed and the Bureau of Reclamation determines that compliance with state and federal laws is complete.